

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1628**

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**Introduced by Assembly Member Beall**  
(Principal coauthor: Senator Alquist)

February 9, 2012

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An act to amend Sections 340.1 and 1002 of the Code of Civil Procedure, and to amend Section 11166 of, and to add Section 11166.6 to, the Penal Code, relating to child abuse ~~reporting~~.

LEGISLATIVE COUNSEL'S DIGEST

AB 1628, as amended, Beall. Child abuse ~~reporting~~.

(1) Existing law generally requires an action for recovery of damages against a person suffered as a result of childhood sexual abuse to be commenced within 8 years of the date the plaintiff attains the age of majority or within 3 years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse, whichever occurs later. Under existing law, certain actions may not be brought against a person or entity on or after the plaintiff's 26th birthday.

This bill would instead provide that any of those actions may be commenced until the plaintiff attains the age of 35 or within 3 years of the date the plaintiff discovers or reasonably should have discovered the psychological injury or illness after the age of majority was caused by the sexual abuse, whichever occurs later, and would delete the provisions prohibiting certain actions from being brought on or after the plaintiff's 26th birthday.

(2) *Existing law prohibits a confidential settlement agreement in a civil action the factual foundation for which establishes a cause of action for an act that may be prosecuted as a felony sex offense, and further makes those provisions inapplicable to a settlement agreement or stipulated agreement that requires the nondisclosure of the amount of any money paid in a settlement of a claim.*

*This bill would delete those provisions and instead would prohibit any confidential settlement in a civil action seeking damages that is based in whole or in part on an act of childhood sexual abuse. The bill would make an agreement entered into on or after January 1, 2013, containing a confidential settlement provision void as a matter of law and against public policy, and would make a violation of those provisions by a party or any attorney a misdemeanor punishable by a fine of \$1,000. The bill would also specify that an attorney who demands a confidential settlement agreement as set forth above shall be subject to disciplinary action by the State Bar. By creating a new crime, the bill would impose a state-mandated local program.*

**Existing**

(3) *Existing law, the Child Abuse and Neglect Reporting Act, requires a mandated reporter, as defined, to report whenever he or she, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observed a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Failure to report an incident is a crime punishable by imprisonment in a county jail for a period of 6 months, a fine of up to \$1,000, or by both that imprisonment and fine. Existing law prohibits a supervisor or administrator from inhibiting a mandated reporter from making a report, authorizes supervisors and administrators of mandated reporters to implement procedures to facilitate the reporting of child abuse and neglect, and prohibits a person from being sanctioned for making the report.*

~~This bill would make technical, nonsubstantive changes to these provisions.~~

*This bill would require any private entity conducting business in the state that has employees, members, agents, licensees, or representatives who are either mandated reporters or whose duties involve close interaction with children on a regular basis to designate an employee to receive complaints of suspected child abuse, and to implement an internal procedure for employees, members, agencies, licensees, or representatives of the private entity to report any incident of suspected*

child abuse to the designated employee. The bill would specify that the private entity is prohibited from sanctioning a person for making a report. The bill would also require a private entity doing business in the state that rents, leases, or uses public property and has an employee, member, agent, licensee, or representative who will access the property and who has duties involving close interaction with children on a regular basis to perform an enhanced background check, as specified, on the employee, member, agent, licensee, or representative. The bill would require the private entity to indemnify the public entity against claims from liability from claims for child abuse or neglect based on the private entity's use of the public property, and to maintain an insurance policy in an amount of not less than \$1,000,000 for the benefit of the public entity. The bill would make a violation of those provisions a misdemeanor punishable by up to 6 months confinement in a county jail or by a fine of \$1,000, or by both that imprisonment and fine. Because the bill would create a new crime, the bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 340.1 of the Code of Civil Procedure is  
2     amended to read:  
3     340.1. (a) In an action against a person or entity for recovery  
4     of damages suffered as a result of childhood sexual abuse, the time  
5     for commencement of the action shall be ~~within eight years of~~ until  
6     the date the plaintiff attains the age of ~~majority~~ 35, or within three  
7     years of the date the plaintiff discovers or reasonably should have  
8     discovered that psychological injury or illness occurring after the  
9     age of majority was caused by the sexual abuse, whichever period  
10    expires later, ~~for any of the following actions:~~  
11    ~~(1) An action against any person for committing an act of~~  
12    ~~childhood sexual abuse.~~

1     ~~(2) An action for liability against any person or entity who owed~~  
2     ~~a duty of care to the plaintiff, where a wrongful or negligent act~~  
3     ~~by that person or entity was a legal cause of the childhood sexual~~  
4     ~~abuse which resulted in the injury to the plaintiff.~~

5     ~~(3) An action for liability against any person or entity where an~~  
6     ~~intentional act by that person or entity was a legal cause of the~~  
7     ~~childhood sexual abuse which resulted in the injury to the plaintiff.~~

8     ~~(b) (1) No action described in paragraph (2) or (3) of~~  
9     ~~subdivision (a) may be commenced on or after the plaintiff's 26th~~  
10    ~~birthday.~~

11    ~~(2) This subdivision does not apply if the person or entity knew~~  
12    ~~or had reason to know, or was otherwise on notice, of any unlawful~~  
13    ~~sexual conduct by an employee, volunteer, representative, or agent,~~  
14    ~~and failed to take reasonable steps, and to implement reasonable~~  
15    ~~safeguards, to avoid acts of unlawful sexual conduct in the future~~  
16    ~~by that person, including, but not limited to, preventing or avoiding~~  
17    ~~placement of that person in a function or environment in which~~  
18    ~~contact with children is an inherent part of that function or~~  
19    ~~environment. For purposes of this subdivision, providing or~~  
20    ~~requiring counseling is not sufficient, in and of itself, to constitute~~  
21    ~~a reasonable step or reasonable safeguard.~~

22    ~~(c) Notwithstanding any other provision of law, any claim for~~  
23    ~~damages described in paragraph (2) or (3) of subdivision (a) that~~  
24    ~~is permitted to be filed pursuant to paragraph (2) of subdivision~~  
25    ~~(b) that would otherwise be barred as of January 1, 2003, solely~~  
26    ~~because the applicable statute of limitations has or had expired, is~~  
27    ~~revived, and, in that case, a cause of action may be commenced~~  
28    ~~within one year of January 1, 2003. Nothing in this subdivision~~  
29    ~~shall be construed to alter the applicable statute of limitations~~  
30    ~~period of an action that is not time barred as of January 1, 2003.~~

31    ~~(d) Subdivision (c) does not apply to either of the following:~~

32    ~~(1) Any claim that has been litigated to finality on the merits in~~  
33    ~~any court of competent jurisdiction prior to January 1, 2003.~~  
34    ~~Termination of a prior action on the basis of the statute of~~  
35    ~~limitations does not constitute a claim that has been litigated to~~  
36    ~~finality on the merits.~~

37    ~~(2) Any written, compromised settlement agreement which has~~  
38    ~~been entered into between a plaintiff and a defendant where the~~  
39    ~~plaintiff was represented by an attorney who was admitted to~~

~~practice law in this state at the time of the settlement, and the plaintiff signed the agreement.~~

~~(e)~~

*(b) (1) “Childhood sexual abuse” as used in this section includes any act committed against the plaintiff that occurred when the plaintiff was under the age of 18 years of age and that would have been proscribed by Section under any of the following:*

*(A) Section 266j of the Penal Code; Section.*

*(B) Section 285 of the Penal Code; paragraph.*

*(C) Paragraph (1) or (2) of subdivision (b) of, or of subdivision (c); of, Section 286 of the Penal Code; subdivision.*

*(D) Subdivision (a) or (b) of Section 288 of the Penal Code; paragraph.*

*(E) Paragraph (1) or (2) of subdivision (b) of, or of subdivision (c); of, Section 288a of the Penal Code; subdivision.*

*(F) Subdivision (h), (i), or (j) of Section 289 of the Penal Code; Section.*

*(G) Section 647.6 of the Penal Code; or any.*

*(H) Any prior laws of this state of similar effect at the time the act was committed. Nothing*

*(2) Nothing in this subdivision limits the availability of causes of action permitted under subdivision (a), including causes of action against persons or entities other than the alleged perpetrator of the abuse.*

~~(f)~~

*(3) Nothing in this section shall be construed to alter the otherwise applicable burden of proof, as defined in Section 115 of the Evidence Code, that a plaintiff has in a civil action subject to this section.*

~~(g)~~

*(c) Every plaintiff 26 35 years of age or older at the time the action is filed shall file certificates of merit as specified in subdivision ~~(h)~~ (d).*

~~(h)~~

*(d) Certificates of merit shall be executed by the attorney for the plaintiff and by a licensed mental health practitioner selected by the plaintiff declaring, respectively, as follows, setting forth the facts which that support the declaration:*

*(1) That the attorney has reviewed the facts of the case, that the attorney has consulted with at least one mental health practitioner*

1 who is licensed to practice and practices in this state and who the  
2 attorney reasonably believes is knowledgeable of the relevant facts  
3 and issues involved in the particular action, and that the attorney  
4 has concluded on the basis of that review and consultation that  
5 there is reasonable and meritorious cause for the filing of the action.  
6 The person consulted may not be a party to the litigation.

7 (2) That the mental health practitioner consulted is licensed to  
8 practice and practices in this state and is not a party to the action,  
9 that the practitioner is not treating and has not treated the plaintiff,  
10 and that the practitioner has interviewed the plaintiff and is  
11 knowledgeable of the relevant facts and issues involved in the  
12 particular action, and has concluded, on the basis of his or her  
13 knowledge of the facts and issues, that in his or her professional  
14 opinion there is a reasonable basis to believe that the plaintiff had  
15 been subject to childhood sexual abuse.

16 (3) That the attorney was unable to obtain the consultation  
17 required by paragraph (1) because a statute of limitations would  
18 impair the action and that the certificates required by paragraphs  
19 (1) and (2) could not be obtained before the impairment of the  
20 action. If a certificate is executed pursuant to this paragraph, the  
21 certificates required by paragraphs (1) and (2) shall be filed within  
22 60 days after filing the complaint.

23 ~~(i)~~  
24 ~~(e)~~ Where certificates are required pursuant to subdivision ~~(g)~~  
25 ~~(c)~~, the attorney for the plaintiff shall execute a separate certificate  
26 of merit for each defendant named in the complaint.

27 ~~(j)~~  
28 ~~(f)~~ In any action subject to subdivision ~~(g)~~ ~~(c)~~, no defendant  
29 may be served, and the duty to serve a defendant with process does  
30 not attach, until the court has reviewed the certificates of merit  
31 filed pursuant to subdivision ~~(h)~~ ~~(d)~~ with respect to that defendant,  
32 and has found, in camera, based solely on those certificates of  
33 merit, that there is reasonable and meritorious cause for the filing  
34 of the action against that defendant. At that time, the duty to serve  
35 that defendant with process shall attach.

36 ~~(k)~~  
37 ~~(g)~~ A violation of this section may constitute unprofessional  
38 conduct and may be the grounds for discipline against the attorney.  
39 ~~(h)~~

1     (h) The failure to file certificates in accordance with this section  
2 shall be grounds for a demurrer pursuant to Section 430.10 or a  
3 motion to strike pursuant to Section 435.

4     ~~(m)~~

5     (i) In any action subject to subdivision-~~(g)~~ (c), no defendant  
6 may be named except by “Doe” designation in any pleadings or  
7 papers filed in the action until there has been a showing of  
8 corroborative fact as to the charging allegations against that  
9 defendant.

10    ~~(n)~~

11    (j) At any time after the action is filed, the plaintiff may apply  
12 to the court for permission to amend the complaint to substitute  
13 the name of the defendant or defendants for the fictitious  
14 designation, as follows:

15    (1) The application shall be accompanied by a certificate of  
16 corroborative fact executed by the attorney for the plaintiff. The  
17 certificate shall declare that the attorney has discovered one or  
18 more facts corroborative of one or more of the charging allegations  
19 against a defendant or defendants, and shall set forth in clear and  
20 concise terms the nature and substance of the corroborative fact.  
21 If the corroborative fact is evidenced by the statement of a witness  
22 or the contents of a document, the certificate shall declare that the  
23 attorney has personal knowledge of the statement of the witness  
24 or of the contents of the document, and the identity and location  
25 of the witness or document shall be included in the certificate. For  
26 purposes of this section, a fact is corroborative of an allegation if  
27 it confirms or supports the allegation. The opinion of any mental  
28 health practitioner concerning the plaintiff shall not constitute a  
29 corroborative fact for purposes of this section.

30    (2) Where the application to name a defendant is made prior to  
31 that defendant’s appearance in the action, neither the application  
32 nor the certificate of corroborative fact by the attorney shall be  
33 served on the defendant or defendants, nor on any other party or  
34 their counsel of record.

35    (3) Where the application to name a defendant is made after  
36 that defendant’s appearance in the action, the application shall be  
37 served on all parties and proof of service provided to the court,  
38 but the certificate of corroborative fact by the attorney shall not  
39 be served on any party or their counsel of record.

40    ~~(o)~~

1 (k) The court shall review the application and the certificate of  
2 corroborative fact in camera and, based solely on the certificate  
3 and any reasonable inferences to be drawn from the certificate,  
4 shall, if one or more facts corroborative of one or more of the  
5 charging allegations against a defendant has been shown, order  
6 that the complaint may be amended to substitute the name of the  
7 defendant or defendants.

8 ~~(p)~~

9 (l) The court shall keep under seal and confidential from the  
10 public and all parties to the litigation, other than the plaintiff, any  
11 and all certificates of corroborative fact filed pursuant to  
12 subdivision-~~(h)~~ (j).

13 ~~(q)~~

14 (m) Upon the favorable conclusion of the litigation with respect  
15 to any defendant for whom a certificate of merit was filed or for  
16 whom a certificate of merit should have been filed pursuant to this  
17 section, the court may, upon the motion of a party or upon the  
18 court's own motion, verify compliance with this section by  
19 requiring the attorney for the plaintiff who was required by  
20 subdivision-~~(h)~~ (d) to execute the certificate to reveal the name,  
21 address, and telephone number of the person or persons consulted  
22 with pursuant to subdivision-~~(h)~~ (d) that were relied upon by the  
23 attorney in preparation of the certificate of merit. The name,  
24 address, and telephone number shall be disclosed to the trial judge  
25 in camera and in the absence of the moving party. If the court finds  
26 there has been a failure to comply with this section, the court may  
27 order a party, a party's attorney, or both, to pay any reasonable  
28 expenses, including attorney's fees, incurred by the defendant for  
29 whom a certificate of merit should have been filed.

30 ~~(r)~~

31 (n) The amendments to this section enacted at the 1990 portion  
32 of the 1989–90 Regular Session shall apply to any action  
33 commenced on or after January 1, 1991, including any action  
34 otherwise barred by the period of limitations in effect prior to  
35 January 1, 1991, thereby reviving those causes of action which  
36 had lapsed or technically expired under the law existing prior to  
37 January 1, 1991.

38 ~~(s)~~

39 (o) The Legislature declares that it is the intent of the  
40 Legislature, in enacting the amendments to this section enacted at



1 the 1994 portion of the 1993–94 Regular Session, that the express  
2 language of revival added to this section by those amendments  
3 shall apply to any action commenced on or after January 1, 1991.

4 ~~(t)~~

5 (p) Nothing in the amendments to this section enacted at the  
6 1998 portion of the 1997–98 Regular Session is intended to create  
7 a new theory of liability.

8 ~~(u)~~

9 (q) The amendments to subdivision (a) of this section, enacted  
10 at the 1998 portion of the 1997–98 Regular Session, shall apply  
11 to any action commenced on or after January 1, 1999, and to any  
12 action filed prior to January 1, 1999, and still pending on that date,  
13 including any action or causes of action which would have been  
14 barred by the laws in effect prior to January 1, 1999. Nothing in  
15 this subdivision is intended to revive actions or causes of action  
16 as to which there has been a final adjudication prior to January 1,  
17 1999.

18 *SEC. 2. Section 1002 of the Code of Civil Procedure is*  
19 *amended to read:*

20 1002. (a) Notwithstanding any other provision of law, a  
21 confidential settlement agreement is prohibited in any civil action  
22 ~~the factual foundation for which establishes a cause of action for~~  
23 ~~civil damages for an act that may be prosecuted as a felony sex~~  
24 ~~offense seeking damages that is based in whole or in part on an~~  
25 ~~act of childhood sexual abuse, as defined in Section 340.1.~~

26 (b) Subdivision (a) does not preclude an agreement preventing  
27 the defendant or any person acting on his or her behalf from  
28 disclosing any medical information or personal identifying  
29 information, as defined in subdivision (b) of Section ~~530.5~~ 530.55  
30 of the Penal Code, regarding the victim of the ~~felony sex offense~~  
31 *childhood sexual abuse* or of any information revealing the nature  
32 of the relationship between the victim and the defendant. This  
33 subdivision shall not be construed to limit the right of a crime  
34 victim to disclose this information.

35 ~~(e) Subdivision (a) does not apply to or affect the ability of the~~  
36 ~~parties to enter into a settlement agreement or stipulated agreement~~  
37 ~~that requires the nondisclosure of the amount of any money paid~~  
38 ~~in a settlement of a claim.~~

39 (c) *An agreement described in subdivision (a) that is entered*  
40 *into on or after January 1, 2013, is void as a matter of law and*

1 *against public policy. A party or attorney who agrees to a*  
2 *confidential settlement agreement described in subdivision (a) is*  
3 *guilty of a misdemeanor punishable by a fine not to exceed one*  
4 *thousand dollars (\$1,000). Any attorney who demands a*  
5 *confidential settlement described in subdivision (a) as a condition*  
6 *of settlement shall be subject to disciplinary action by the State*  
7 *Bar.*

8 **SECTION 1.**

9 **SEC. 3.** Section 11166 of the Penal Code is amended to read:

10 11166. (a) Except as provided in subdivision (d), and in  
11 Section 11166.05, a mandated reporter shall make a report to an  
12 agency specified in Section 11165.9 whenever the mandated  
13 reporter, in his or her professional capacity or within the scope of  
14 his or her employment, has knowledge of or observes a child whom  
15 the mandated reporter knows or reasonably suspects has been the  
16 victim of child abuse or neglect. The mandated reporter shall make  
17 an initial report to the agency immediately or as soon as is  
18 practicably possible by telephone and the mandated reporter shall  
19 prepare and send, fax, or electronically transmit a written followup  
20 report thereof within 36 hours of receiving the information  
21 concerning the incident. The mandated reporter may include with  
22 the report any nonprivileged documentary evidence the mandated  
23 reporter possesses relating to the incident.

24 (1) For purposes of this article, “reasonable suspicion” means  
25 that it is objectively reasonable for a person to entertain a suspicion,  
26 based upon facts that could cause a reasonable person in a like  
27 position, drawing, when appropriate, on his or her training and  
28 experience, to suspect child abuse or neglect. “Reasonable  
29 suspicion” does not require certainty that child abuse or neglect  
30 has occurred nor does it require a specific medical indication of  
31 child abuse or neglect; any “reasonable suspicion” is sufficient.  
32 For the purpose of this article, the pregnancy of a minor does not,  
33 in and of itself, constitute a basis for a reasonable suspicion of  
34 sexual abuse.

35 (2) The agency shall be notified and a report shall be prepared  
36 and sent, faxed, or electronically transmitted even if the child has  
37 expired, regardless of whether or not the possible abuse was a  
38 factor contributing to the death, and even if suspected child abuse  
39 was discovered during an autopsy.

1 (3) Any report made by a mandated reporter pursuant to this  
2 section shall be known as a mandated report.

3 (b) If after reasonable efforts a mandated reporter is unable to  
4 submit an initial report by telephone, he or she shall immediately  
5 or as soon as is practicably possible, by fax or electronic  
6 transmission, make a one-time automated written report on the  
7 form prescribed by the Department of Justice, and shall also be  
8 available to respond to a telephone followup call by the agency  
9 with which he or she filed the report. A mandated reporter who  
10 files a one-time automated written report because he or she was  
11 unable to submit an initial report by telephone is not required to  
12 submit a written followup report.

13 (1) The one-time automated written report form prescribed by  
14 the Department of Justice shall be clearly identifiable so that it is  
15 not mistaken for a standard written followup report. In addition,  
16 the automated one-time report shall contain a section that allows  
17 the mandated reporter to state the reason the initial telephone call  
18 was not able to be completed. The reason for the submission of  
19 the one-time automated written report in lieu of the procedure  
20 prescribed in subdivision (a) shall be captured in the Child Welfare  
21 Services/Case Management System (CWS/CMS). The department  
22 shall work with stakeholders to modify reporting forms and the  
23 CWS/CMS as is necessary to accommodate the changes enacted  
24 by these provisions.

25 (2) This subdivision shall not become operative until the  
26 CWS/CMS is updated to capture the information prescribed in this  
27 subdivision.

28 (3) This subdivision shall become inoperative three years after  
29 this subdivision becomes operative or on January 1, 2009,  
30 whichever occurs first.

31 (4) On the inoperative date of these provisions, a report shall  
32 be submitted to the counties and the Legislature by the State  
33 Department of Social Services that reflects the data collected from  
34 automated one-time reports indicating the reasons stated as to why  
35 the automated one-time report was filed in lieu of the initial  
36 telephone report.

37 (5) Nothing in this section shall supersede the requirement that  
38 a mandated reporter first attempt to make a report via telephone,  
39 or that agencies specified in Section 11165.9 accept reports from  
40 mandated reporters and other persons as required.

(c) Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars (\$1,000) or by both that imprisonment and fine. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until an agency specified in Section 11165.9 discovers the offense.

(d) (1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a). For the purposes of this subdivision, “penitential communication” means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(2) Nothing in this subdivision shall be construed to modify or limit a clergy member’s duty to report known or suspected child abuse or neglect when the clergy member is acting in some other capacity that would otherwise make the clergy member a mandated reporter.

(3) (A) On or before January 1, 2004, a clergy member or any custodian of records for the clergy member may report to an agency specified in Section 11165.9 that the clergy member or any custodian of records for the clergy member, prior to January 1, 1997, in his or her professional capacity or within the scope of his or her employment, other than during a penitential communication, acquired knowledge or had a reasonable suspicion that a child had been the victim of sexual abuse that the clergy member or any custodian of records for the clergy member did not previously report the abuse to an agency specified in Section 11165.9. The provisions of Section 11172 shall apply to all reports made pursuant to this paragraph.

1 (B) This paragraph shall apply even if the victim of the known  
2 or suspected abuse has reached the age of majority by the time the  
3 required report is made.

4 (C) The local law enforcement agency shall have jurisdiction  
5 to investigate any report of child abuse made pursuant to this  
6 paragraph even if the report is made after the victim has reached  
7 the age of majority.

8 (e) Any commercial film and photographic print processor who  
9 has knowledge of or observes, within the scope of his or her  
10 professional capacity or employment, any film, photograph,  
11 videotape, negative, or slide depicting a child under the age of 16  
12 years engaged in an act of sexual conduct, shall report the instance  
13 of suspected child abuse to the law enforcement agency having  
14 jurisdiction over the case immediately, or as soon as practicably  
15 possible, by telephone and shall prepare and send, fax, or  
16 electronically transmit a written report of it with a copy of the film,  
17 photograph, videotape, negative, or slide attached within 36 hours  
18 of receiving the information concerning the incident. As used in  
19 this subdivision, "sexual conduct" means any of the following:

20 (1) Sexual intercourse, including genital-genital, oral-genital,  
21 anal-genital, or oral-anal, whether between persons of the same or  
22 opposite sex or between humans and animals.

23 (2) Penetration of the vagina or rectum by any object.

24 (3) Masturbation for the purpose of sexual stimulation of the  
25 viewer.

26 (4) Sadomasochistic abuse for the purpose of sexual stimulation  
27 of the viewer.

28 (5) Exhibition of the genitals, pubic, or rectal areas of any person  
29 for the purpose of sexual stimulation of the viewer.

30 (f) Any mandated reporter who knows or reasonably suspects  
31 that the home or institution in which a child resides is unsuitable  
32 for the child because of abuse or neglect of the child shall bring  
33 the condition to the attention of the agency to which, and at the  
34 same time as, he or she makes a report of the abuse or neglect  
35 pursuant to subdivision (a).

36 (g) Any other person who has knowledge of or observes a child  
37 whom he or she knows or reasonably suspects has been a victim  
38 of child abuse or neglect may report the known or suspected  
39 instance of child abuse or neglect to an agency specified in Section  
40 11165.9. For purposes of this section, "any other person" includes

1 a mandated reporter who acts in his or her private capacity and  
2 not in his or her professional capacity or within the scope of his  
3 or her employment.

4 (h) When two or more persons, who are required to report,  
5 jointly have knowledge of a known or suspected instance of child  
6 abuse or neglect, and when there is agreement among them, the  
7 telephone report may be made by a member of the team selected  
8 by mutual agreement and a single report may be made and signed  
9 by the selected member of the reporting team. Any member who  
10 has knowledge that the member designated to report has failed to  
11 do so shall thereafter make the report.

12 (i) (1) The reporting duties under this section are individual;  
13 ~~and no. A supervisor or, administrator may, or private entity~~  
14 ~~employer, described in Section 11166.6, of a person required to~~  
15 ~~report pursuant to this section shall not impede or inhibit the~~  
16 ~~reporting duties specified in this section, and no a person making~~  
17 ~~a report shall not be subject to any sanction for making the report.~~  
18 However, internal procedures to facilitate reporting and apprise  
19 supervisors and administrators of reports may be established  
20 provided that they are ~~not inconsistent~~ consistent with this article.

21 (2) The internal procedures shall not require any employee  
22 required to make reports pursuant to this article to disclose his or  
23 her identity to the employer.

24 (3) Reporting the information regarding a case of possible child  
25 abuse or neglect to an employer, supervisor, school principal,  
26 school counselor, coworker, or other person shall not be a substitute  
27 for making a mandated report to an agency specified in Section  
28 11165.9.

29 (j) A county probation or welfare department shall immediately,  
30 or as soon as practicably possible, report by telephone, fax, or  
31 electronic transmission to the law enforcement agency having  
32 jurisdiction over the case, to the agency given the responsibility  
33 for investigation of cases under Section 300 of the Welfare and  
34 Institutions Code, and to the district attorney's office every known  
35 or suspected instance of child abuse or neglect, as defined in  
36 Section 11165.6, except acts or omissions coming within  
37 subdivision (b) of Section 11165.2, or reports made pursuant to  
38 Section 11165.13 based on risk to a child that relates solely to the  
39 inability of the parent to provide the child with regular care due  
40 to the parent's substance abuse, which shall be reported only to

1 the county welfare or probation department. A county probation  
2 or welfare department also shall send, fax, or electronically transmit  
3 a written report thereof within 36 hours of receiving the information  
4 concerning the incident to any agency to which it makes a  
5 telephone report under this subdivision.

6 (k) A law enforcement agency shall immediately, or as soon as  
7 practicably possible, report by telephone, fax, or electronic  
8 transmission to the agency given responsibility for investigation  
9 of cases under Section 300 of the Welfare and Institutions Code  
10 and to the district attorney's office every known or suspected  
11 instance of child abuse or neglect reported to it, except acts or  
12 omissions coming within subdivision (b) of Section 11165.2, which  
13 shall be reported only to the county welfare or probation  
14 department. A law enforcement agency shall report to the county  
15 welfare or probation department every known or suspected instance  
16 of child abuse or neglect reported to it which is alleged to have  
17 occurred as a result of the action of a person responsible for the  
18 child's welfare, or as the result of the failure of a person responsible  
19 for the child's welfare to adequately protect the minor from abuse  
20 when the person responsible for the child's welfare knew or  
21 reasonably should have known that the minor was in danger of  
22 abuse. A law enforcement agency also shall send, fax, or  
23 electronically transmit a written report thereof within 36 hours of  
24 receiving the information concerning the incident to any agency  
25 to which it makes a telephone report under this subdivision.

26 *SEC. 4. Section 11166.6 is added to the Penal Code, to read:*

27 *11166.6. (a) Any private entity conducting business in this*  
28 *state that has employees, members, agents, licensees, or*  
29 *representatives who are either mandated reporters or whose duties*  
30 *involve close interaction with children on a regular basis shall do*  
31 *all of the following:*

32 *(1) Designate an employee to receive complaints of suspected*  
33 *child abuse.*

34 *(2) Implement an internal procedure for employees, members,*  
35 *agents, licensees, or representatives to report any incident of*  
36 *suspected child abuse to a designated employee, and distribute a*  
37 *written copy of the procedure to all employees. The procedure*  
38 *shall identify the employee who the private entity has designated*  
39 *to receive complaints of suspected child abuse, and shall specify*  
40 *that a person who reports a complaint of suspected child abuse*

1 *shall not be subject to any sanction for making the report. The*  
2 *procedure shall be consistent with the provisions of Section 11166.*

3 *(3) Ensure that a mandated report has been made in accordance*  
4 *with Section 11166. A single report may be made in accordance*  
5 *with the provisions of subdivision (h) of Section 11166.*

6 *(b) For purposes of this section, “private entity” means any*  
7 *entity that is registered, incorporated, or has its principal place*  
8 *of business in this state.*

9 *(c) (1) A private entity conducting business in this state that*  
10 *rents, leases, or uses public property where an employee, member,*  
11 *agent, licensee, or representative of the private entity will access*  
12 *the public property and has duties involving close interaction with*  
13 *children on a regular basis shall conduct an enhanced background*  
14 *check on the employee, member, agent, licensee, or representative*  
15 *that includes, but is not limited to, the following:*

16 *(A) Three past employment checks.*

17 *(B) Three reference checks.*

18 *(C) A criminal background check to ascertain whether the*  
19 *person has been arrested or investigated for a crime involving the*  
20 *physical or sexual abuse of a child.*

21 *(D) A public records search to ascertain whether the person*  
22 *has been the subject of any civil claim involving the physical or*  
23 *sexual abuse of a child.*

24 *(2) A private entity shall indemnify a public entity against claims*  
25 *for liability resulting from claims for child abuse or neglect based*  
26 *on the private entity’s use of the public property and shall maintain*  
27 *an insurance policy in an amount no less than one million dollars*  
28 *(\$1,000,000) for the benefit of the public entity.*

29 *(d) A violation of the provisions of this section is a misdemeanor*  
30 *punishable by up to six months imprisonment in a county jail or*  
31 *by a fine of one thousand dollars (\$1,000), or by both that*  
32 *imprisonment and fine. If a person intentionally conceals a failure*  
33 *to report an incident pursuant this section, the failure to report is*  
34 *a continuing offense until an agency specified in Section 11165.9*  
35 *discovers the offense.*

36 *SEC. 5. No reimbursement is required by this act pursuant to*  
37 *Section 6 of Article XIII B of the California Constitution because*  
38 *the only costs that may be incurred by a local agency or school*  
39 *district will be incurred because this act creates a new crime or*  
40 *infraction, eliminates a crime or infraction, or changes the penalty*



1 *for a crime or infraction, within the meaning of Section 17556 of*  
2 *the Government Code, or changes the definition of a crime within*  
3 *the meaning of Section 6 of Article XIII B of the California*  
4 *Constitution.*

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